

BEFORE THE
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

La Grande Post Office
La Grande, Washington

Docket No. A2011-98

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(December 7, 2011)

I. INTRODUCTION AND BACKGROUND

On September 28, 2011, the Commission docketed the petition for review of the closing of the La Grande Post Office.¹ On September 30, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² Thereafter, on October 13, 2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination to Close the La Grande, WA Post Office and Extend Service by Rural Route Service, Postal Service Docket Number 1369365-98348.³ On November 1, 2011, Petitioners David and Judi Smith filed a joint Participant Statement in which they

¹ Letter filed by Mr. David and Judi Smith of La Grande, WA, September 28, 2011. (Petition). In addition, on September 30, 2011, the Commission received a letter in support of the petition from the Pierce County Council Chair, Roger Bush.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 30, 2011. (Order No. 891).

³ United States Postal Service Notice of Filing, October 13, 2011. (AR).

set forth objections to the closure of the La Grande Post Office.⁴ On November 22, 2011, the Postal Service filed comments supporting its closure determination.⁵

II. STATEMENT OF FACTS

The La Grande Post Office is described by the Postal Service in its Final Determination as an EAS-51 level post office in La Grande, Washington located in Pierce County. AR, Item No. 1 at 1. The La Grande Post Office provides post office box service to 17 customers. *Id.* Its customers engage in an average of 4.1 daily window transactions. AR Item No. 10; FD-AR Item No. 47 at 2.

On February 28, 2011, the Manager of Postal Operations requested permission to investigate a possible change in postal services for La Grande Post Office. AR Item No. 1. The District Manager approved the request. AR, Item No. 1 at 1.

The Postal Service sent a notice⁶ informing La Grande's customers of a "possible change in the way [their] postal service is provided." AR, Item No. 21 at 1. The Postal Service's notice indicates that it can provide regular and effective mail service from the Eatonville Post Office located four miles away. *Id.* The notice further states that the Eatonville rural route drives through La Grande, and thus, customers who would like home delivery can receive rural route delivery to "central locations on the Eatonville rural route line of travel." *Id.* In addition, customers were invited to attend a public meeting on April 7, 2011, at which Postal Service representatives would be available to answer questions and provide information about the possible change in service.

⁴ Participant Statement of David and Judi Smith, November 1, 2011. (Participant Statement).

⁵ United States Postal Service Comments Regarding Appeal, November 22, 2011 (Postal Service Comments).

⁶ The dates on the notices to the OIC/Postmaster and the notice to La Grande's customers contain minor errors. The date on the Notice to the OIC/Postmaster is May 2, 2011. AR Item No. 20 at 1. The date on the notice to customers is January 1, 1900. AR Item No. 21 at 1; and FD at 1. Both the notice to the OIC/Postmaster and the notice to the customers state that the due date for the completed surveys is April 7, 2011. AR Item No. 20 at 1 and AR Item No. 21 at 1, respectively. Perhaps, the date of the notices to the OIC/Postmaster and the customers should have been April 2, 2011. Nevertheless, such errors complicated the review of the Administrative Record.

Of the 20 questionnaires distributed by the Postal Service, 10 were returned: 0 responded favorably to the proposal; 5 expressed opposition or concern; and 5 expressed no opinion. AR, Item No. 33 at 2. The meeting was held on April 7, 2011, as scheduled with 3 customers in attendance. *Id.*

On May 23, 2011, a formal proposal to close the La Grande Post Office was forwarded to that post office for posting for a period of sixty days. AR, Item No. 31 at 1. An invitation to file comments was also posted in the La Grande Post Office. *Id.* In addition, 38 customers⁷ responded to the proposal during the posting period that ended August 1, 2011. AR, Item No. 40 at 1.

On August 30, 2011, the Final Determination to close the La Grande Post Office was approved. Final Determination at 1. The decision was based upon: (1) the vacant postmaster position;⁸ (2) the cost of required modifications exceeds the value of the present building; (3) the lease for the post office expires soon and there is no alternative locations; and (4) the Postal Service can provide regular and effective mail service from the Eatonville Post Office located four miles north of the La Grande Post Office. In addition, the Postal Service estimates that it could save \$15,791. *Id.* at 2. The Final Determination considered and responded to various concerns expressed by postal customers during the posting period of the proposal to close the post office. *Id.* at 2-4.

⁷ Note that the amount of comments received regarding the proposal to close the La Grande Post Office is greater than the amount of La Grande Post Office's delivery (or PO Box) customers. According to the Administrative Record, some of the respondents were visitors from other countries, including Japan, Germany, Switzerland, China, Ireland, and France. AR Item No. 38 at 26.

⁸ From the Administrative Record and the Final Determination, it is not clear if the postmaster position is vacant. The August 30, 2011 final determination states that the "position will become vacant when the postmaster was reassigned on June 30, 2011." This statement is not clear.

III. POSITIONS OF THE PARTIES

A. The Petitioners

The arguments in the Petition and Participant Statement can generally be grouped into four main reasons opposing the closing of the La Grande Post Office: (1) the Postal Service did not properly notify customers of its Final Determination; (2) the factors the Postal Service used to close the La Grande Post Office were not supported in the record; (3) the postal service did not properly consider the effects of the closing on postal services and the La Grande community; and (4) the Postal Service did not adequately consider the economic savings from closing the La Grande Post Office.

The Petitioners identify additional concerns with the Administrative Record and the factors the Postal Service considered in its determination to close the La Grande Post Office. The Petitioners assert that the costs for the required modifications to the La Grande Post Office have not been identified and there is no valid justification for the modifications.⁹ The Petitioners argue that the postmaster has yet to be reassigned, yet the final determination indicates that the postmaster has already been reassigned.¹⁰ In addition, the Petitioners argue that the Postal Service conducted the workload survey during an off-season which is not indicative of La Grande's average workload.¹¹ Finally, the Petitioners argue that the lease does not expire until December 31, 2012, which means there is not an immediate need to close the La Grande Post Office.¹²

B. The Postal Service

On November 22, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 891. In that filing, the Postal Service states that it gave the issues presented by the Petitioner serious consideration before determining

⁹ Petition at 2; Participant Statement at 1 and 4.

¹⁰ Petition at 2; Participant Statement at 3 and 7.

¹¹ Participant Statement at 2.

¹² Petition at 4; Participant Statement at 4-5.

to close the La Grande Post Office. Postal Service Comments at 1. The Postal Service supports its decision to close La Grande Post Office on the basis that: (1) it considered the effect of closing the La Grande Post Office on postal services, the community, and employees;¹³ and (2) it properly considered the economic savings that would result from the proposed closing.¹⁴

Further, in its Comments, the Postal Service explains that a variety of factors led to its Final Determination to close the La Grande Post Office, including the upcoming vacancy¹⁵ of the postmaster, the minimal workload, the expiration of the lease in approximately one year, the cost of upgrades to the building, the variety of delivery and retail operations, very little growth expected in the area, the minimal impact on the community, and the low amount of revenue generated by the office. Postal Service Comments at 6.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does

¹³ Postal Service Comments at 5-9, 9-12, and 15-16, respectively.

¹⁴ Postal Service Comments at 12-15.

¹⁵ The Postal Service explains that the Administrative Record and the Final Determination erroneously indicated that the postmaster had already been assigned.

not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.¹⁶

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the La Grande Post Office, and the Postal Service Comments, the Public Representative concludes that (1) the Postal Service has generally followed applicable procedures; (2) the decision to close the La Grande Post Office appears to be arbitrary or capricious; and (3) the Postal Service's decision is not supported by substantial evidence.

¹⁶ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. The petitioner in this proceeding requested suspension of the closure of the La Grande Post Office. See Participant Statement, Attachment 6.

The Postal Service's decision to close the La Grande Post Office should be remanded for three reasons: (1) the cost savings were not sufficiently considered; (2) the effect on employees was not adequately considered; and (3) the decision is not supported in the record. Each reason is discussed below.

Before discussing the specific reasons for why the decision should be remanded, it is important to first address the issue of the "reassigned postmaster." Throughout the Administrative Record and the Final Determination, the Postal Service notes that the postmaster position "will become vacant when the postmaster was reassigned on June 30, 2011." AR, Item No. 21 at 1; AR, Item 33 at 2 and 6; Final Determination at 1 and 4. Upon first glance, it appears that the position is will become vacant soon and that the Postal Service inadvertently stated "was reassigned on June 30, 2011."¹⁷ However, the Final Determination further states "since the postmaster vacancy, an OIC has been installed to operate the office." Final Determination at 1 and 4. In fact, much of the analysis of the Final Determination relies on the knowledge that the postmaster has already been reassigned.

In its comments, the Postal Service clears up this miscommunication and states that the Final Determination inadvertently stated that the postmaster position was currently vacant. Postal Service Comments at 2, n. 4. The Postal Service asserts that the error does not "change the need for the Postal Service to change course in this discontinuance action." *Id.* For reasons explained below, the Public Representative disagrees and concludes that much of the analysis that led to the Postal Service's determination to close the La Grande Post Office needs to be reconsidered.

¹⁷ AR Item No. 18 at 1 suggests that the postmaster is a career employee. However, it also notes that the postmaster "was reassigned 6/30/2011."

1. The Cost Savings were not Sufficiently Considered

The Postal Service estimates annual savings of \$15,791 from the closure of the La Grande Post Office, with 96 percent (\$15,146) of the savings attributed to postmaster salary and benefits. The annual cost savings estimate is severely overstated.

The Petitioners assert that La Grande's postmaster will be reassigned to the Elbe Post Office, which does not currently have a postmaster. The Petitioners further assert that reassigning the postmaster negates the employee cost savings from closing the La Grande Post Office. *Id.*

The Public Representative concurs with the Petitioners that since the postmaster will be reassigned to another location, the Postal Service does not avoid employee costs.¹⁸ In addition, the Commission has previously ruled that savings attributable to costs that are not shown to be avoided should not be including in the savings estimates.¹⁹ If the current employee was a non-career OIC or PMR, as the Final Determination appears to assume, a reasonable argument could be made that employee costs should be included in the economic savings.

Consequently, savings attributable to La Grande's postmaster salary and benefits should be removed from the Postal Service's cost savings estimate. This results in an annual net savings of \$645 (\$15,791 - \$15,146) from closing the La Grande Post Office.²⁰

¹⁸ The postmaster is the only employee at the La Grande Post Office. See Postal Service Comments at 15.

¹⁹ See Docket No. A2011-19, Order No. 912, October 20, 2011 at 12-13. See, e.g., Docket No. A2011-18, Order No. 865, September 23, 2011 at 12-13; and Docket No. A2011-16, Order No. 843, Order Affirming Determination, September 8, 2011 at 13-14.

²⁰ Assuming that the 17 PO Box customers currently pay for their PO Box Service, including the revenue forgone from the estimated 10 customers who would receive rural carrier delivery would result in even smaller savings. See AR Item No. 17 at 2. From the Postal Service's website, the Public Representative deduced that the La Grande Post Office is a part of Fee Group 4. Thus, incorporating this knowledge, a lower bound of revenue forgone is \$460 (10 foregone customers x \$46.00 size 1 box annual price for Fee Group 4). This would reduce the annual economic savings to a dismal \$185.

2. The Effect on Employees was not Adequately Considered

The Final Determination assumes that there is an OIC at La Grande's post office and that this employee may be separated from the Postal Service.²¹ Therefore, the Postal Service's Final Determination did not accurately address the closing of the La Grande Post Office on the current career employee at La Grande's post office. Grant it, the Postal Service's Comments clears up the confusion from the Final Determination. However, the Final Determination should be complete and accurate, and if it's not, a revised Final Determination should be submitted for the record.

3. The Postal Service's Decision is not Supported with Evidence in the Record

The Final Determination indicates that the Postal Service determined to close the La Grande Post Office because the cost of required modifications exceeds the value of the present building, the lease for the post office expires soon and there is no alternative locations, the Postal Service can provide regular and effective mail service from the Eatonville Post Office located four miles north of the La Grande Post Office, and the Postal Service could save \$15,791. Final Determination at 1 and 4.

However, a review of the Administrative Record suggests that the following factors may not be supported in the record: the economic savings from closing the post office, as well as the cost of required modifications.²² These comments have already

²¹ The Final Determination states that "since the postmaster vacancy an OIC has been installed to operate the office." Final Determination at 4

²² The Petitioners assert that the workload study was conducted in the first half of March, which is a month typically in a "doldrums" period because it is after the end of ski season and just before the surge of the summer tourism traffic. Participant Statement at 2. In its Comments, the Postal Service contends that the study only provides a snapshot of the workload at a specific time, and that even if the study was conducted during an off-peak season, the daily number of transactions at La Grande's post office is so low that doubling or tripling the amount of transactions would not be enough transactions to warrant retaining the La Grande Post Office. Postal Service Comments at 2, n. 3. The Public Representative believes the Petitioners argument is noteworthy and should be taken into consideration with the Postal Service's workload studies. Perhaps, the Postal Service could expand its workload studies to include snapshots from multiple quarters or find a way to obtain more representative data for each post office.

demonstrated how the economic savings are not supported in the record. Below, the costs for required post office modifications are discussed.

Costs for required post office modifications. In its Final Determination, the Postal Service purports that the costs for modifying the post office exceed the value of the present post office. Final Determination at 1. However, as the Petitioners explain in their Petition and Participant Statement, the Postal Service does not explain what modifications are needed or how much the modifications cost. Based on the Administrative Record, it appears that the Postal Service does not know what modifications are necessary or how much the modifications cost.

The Petitioners claim that modifications are not necessary. Participant Statement at 1. The Petitioners assert that there are no complaints or problems suggesting a need for modifications. In addition, as the Petitioner notes, the Administrative Record suggests that the Postal Service did not conduct a building inspection or obtain photos of building deficiencies. AR Item No. 6 at 1. In the absence of the Postal Service's response to this assertion, the Public Representative has no choice but to conclude that the Postal Service has not justified its claim that the modifications to the store are warranted.²³ Consequently, this factor should not be included as one of the justifications for closing La Grande's post office.

Implications for the unsupported decision. The Petitioners assert that the decision to close the La Grande Post Office was based "solely on consideration of financial needs." Since the cost savings (and by default, the lease savings), as well as the costs for the "required" modifications are not supported by the Administrative Record, the Public Representative is compelled to agree with the Petitioners. As mentioned previously, the Postal Service's Comments state that the only other factors it used in its decision to close the La Grande Post Office include the upcoming vacancy of

²³ In its Comments, the Postal Service merely mentions that it must "maintain all facilities in a safe manner and make necessary repairs and upgrades when the need arises." Postal Service Comments at 13. Yet, the Postal Service fails to articulate what repairs and upgrades are necessary. In addition, the Postal Service fails to demonstrate how the costs of such repairs and upgrades exceed the cost of the building.

the postmaster, the minimal workload, the variety of delivery and retail operations, very little growth expected in the area, the minimal impact on the community, and the low amount of revenue generated by the office. However, these other factors appear to be based solely on the La Grande's Post Office's operational deficit.²⁴ For instance, the upcoming postmaster vacancy is a direct cause of the Postal Service's decision to close the La Grande Post Office. In its Comments, the Postal Service states that "the postmaster will be offered a reassignment," which is a clear indication that the vacancy will occur only if the Postal Service closes the La Grande Post Office. Postal Service Comments at 15. This would seemingly violate section 101(b), which states that a small post office shall not be closed solely for operating at a deficit. See 39 U.S.C. 101(b).

VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the La Grande Post Office should be remanded.

Respectfully Submitted,

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²⁴ The Postal Service estimates that the total annual cost of the La Grande Post Office is \$16,946. Over the past three fiscal years, La Grande's post office earned revenues of \$2,457, \$2,253, and \$2,014, respectively. In addition, the Postal Service does not explain its assertion that a variety of retail and delivery options exist.